IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTYION

WRIT PETITION NO.1647 OF 2005

Dashrath Laxman Rahate .. Petitioner

vs

M/s Oriental Containers Limited ..Respondent

Mr R.D.Bhat for Petitioner

Mr V.P.Vaidya for Respondent no.1

CORAM : D.G.KARNIK, J

DATE: 27th June 2005

P.C.

1. Heard learned counsel for the petitioner. By this petition the petitioner challenges the judgment and order dated 31st January 2005 passed by the 4th Labour Court, Mumbai rejecting his reference and refusing to pass an order of reinstatement.

2. The petitioner has been dismissed from service after holding an enquiry into his misconduct. The misconduct alleged was that the petitioner was absent from duty from 26th October, 1995 without leave and prior permission. Three grounds have

been urged before me which are considered below:

3. It was firstly contended that the charge sheet was not proper as it was not in respect of absence from 26th October, 1995 but was in respect of absence from duty in the year 1993 and in the year 1994. That contention was also raised before the Labour Court. I have perused the copy of the charge sheet which is annexed at Exhibit F. The charge sheet specifically mentions that the misconduct charged was : absence from duty from 26th October, 1995 without leave. The charge sheet also mentioned the prior absence of 199 days in 1993 and 150 days in the year 1994 but that was to show habitual absence. Therefore, the contention that the charge sheet was not in respect of absence from 26th October, 1995 is not correct and the finding recorded by the labour court in that respect is proper.

4. Secondly it was submitted that the charge sheet was not received by the petitioner as he had gone to his native place to recoup his health on account of illness suffered by him. The petitionker therefore did not have proper opportunity of

defending himself before the enquiry officer. I have perused the statement of claim filed by the petitioner before the labour court. (Exhibit J to the petition). In the said statement of claim the petitioner has not raised the contention that the charge sheet was not received by him. Contention that is raised in the statement of claim is that proper intimation of date of enquiry was not given. From the judgment of the labour court it does not appear that this contention that the charge sheet was not received by the petitioner was ever raised before the labour court. Hence that contention cannot be allowed to be raised for the first time in the writ petition.

5. Lastly, it is submitted that absence is not a misconduct because the petitioner had applied to respondent no.1 for leave. Leave was rejected and the petitioner was informed by a letter that he was unauthorisedly absent and should join the duties. That letter was refused to be accepted by him. In the circumstances the contention that absence was no misconduct also cannot be correct.

6. No other point is urged. Petition rejected

summarily.

D.G.KARNIK, J